

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PAUL JAMES UPSHER,)	
)	Civil Action No. 10 - 1473
Petitioner,)	
)	District Judge Donetta W. Ambrose
v.)	
)	
WARDEN BURNS; THE ATTORNEY)	
GENERAL OF THE STATE OF)	
PENNSYLVANIA; THE DISTRICT)	
ATTORNEY FO THE COUNTY OF)	
ALLEGHENY COUNTY,)	
Respondents.)	

MEMORANDUM ORDER

On November 4, 2010, the above captioned case was initiated by the filing of a Petition for Writ of Habeas Corpus (ECF No. 1) and was referred to a united states magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The magistrate judge filed a Report and Recommendation on November 18, 2010 (ECF No. 5) recommending that the Petition for Writ of Habeas Corpus be dismissed as untimely and that a certificate of appealability be denied. On December 9, 2010, Petitioner filed Objections to the Report and Recommendation (ECF No. 7). Petitioner's objections do not undermine the recommendation of the magistrate judge.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered:

AND NOW, this 3rd day of January, 2011

IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus is **DISMISSED** as untimely.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 5) is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.

AND IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

A handwritten signature in black ink, appearing to read "Donetta W. Ambrose", is written over a horizontal line.

Donetta W. Ambrose
United States District Judge

cc: Paul Upsher
AP-4601
SCI Laurel Highland
P.O. Box 631
Somerset, PA 15501-0631